REMARKS

Claims 2-8, 11-21, 24-47, and 54-61 are pending. Claims 1, 20, 26, 31, 36, 38, 39, and 42 are amended. Claims 48-53 are canceled. New claims 54-61 are added.

Claims 2-8, 11-17, 20-21, 24-25, 27, 30-36, 38-40, and 42-45 have been rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent No. 6,571,326 (Nepomuceno Patent).

In a prior Office Action dated September 28, 2004, these claims were rejected in view of the pre-grant publication to Nepomuceno, U.S. Patent Application Publication No. 2001/0036289 (Nepomuceno Publication), which issued on June 15, 2004, as the Nepomuceno Patent. In response to the September 28, 2004, Office Action, Applicants pointed out that the drawings in the Nepomuceno Publication along with the supporting description clearly taught that no part of the receiver was in contact with the case. Years after Applicants' filing date, Nepomuceno submitted formal drawings in 2004 that appear to materially differ from the originally filed drawings.

Applicants respectfully traverse the rejection based on the Nepomuceno Patent because the drawings therein were filed years after Applicants' filing date of November 16, 2001. To qualify as prior art under 35 U.S.C. § 102(e), the formal drawings submitted in 2004 during prosecution of the Nepomuceno Patent must be entitled to benefit of the original filing date of the Nepomuceno Publication; because they are not, they cannot be used to reject the claims at issue.

Applicants' invention is directed to, *inter alia*, a housing, a jacket having at least three sections for engaging at least three of the sides, the three sections being generally flat and **lying on** respective ones of the sides, thereby enhancing the structural integrity of the acoustic receiver and protecting the housing and the converting means from damage due to handling, at least one of the three sections contacting one of the sides, the jacket having a thickness and a mass adapted to suppress vibrational feedback. Another aspect of Applicants' invention is directed to, *inter alia*, a jacket surrounding at least a portion of the housing prior to installation of the transducer into a hearing aid or a telecommunications system so as to protect the transducer against damage due to handling thereof during the installation, the jacket having a thickness and a mass adapted to suppress vibrational feedback, at least part of the jacket **contacting the housing directly or via a layer of acoustical dampening material sandwiched between the at least part of the**

jacket and the housing. Still another aspect of Applicants' invention is directed to, *inter alia*, a jacket having at least three sections for engaging at least three of the sides, the three sections being generally flat and **lying on and contacting, directly or via a layer of acoustical dampening material,** respective ones of the sides, thereby enhancing the structural integrity of said microphone and protecting said housing and the converting means from damage due to handling, the jacket having a thickness and a mass adapted to suppress vibrational feedback. Yet another aspect of the present invention is directed to, *inter alia*, a jacket having sections for **at least partially enfolding** the sides, one of the sections and a corresponding side forming a gap therebetween, thereby enhancing the structural integrity of the acoustic receiver and protecting the housing and the converting means from damage due to handling, the jacket having a thickness and a mass adapted to suppress vibrational feedback. A still further aspect of Applicants' invention is directed to, *inter alia*, a jacket having a rectangular cross-section and sections for **closely interfitting with four of the six sides**, thereby enhancing the structural integrity of the acoustic receiver and protecting the housing and the converting means from damage due to handling, the jacket having a thickness and a mass adapted to suppress vibrational feedback, wherein at least one of the sections of said jacket **contacts** a corresponding one of the four of the six sides **directly or via a layer of dampening material sandwiched between the at least one of the sections of the jacket and the corresponding one of the four of the six sides**. An even further aspect of the Applicants' invention is directed to, *inter alia*, an epoxy jacket **encapsulating** the housing so as to **contact** at least two of the sides thereof, the epoxy jacket being adapted to enhance the structural integrity of the acoustic receiver and protect the housing and the means for converting from damage due to handling, the epoxy jacket having a mass adapted to suppress vibrational feedback.

In the Nepomuceno Publication, the application included two drawings, FIGS. 5 and 6, reproduced below, that clearly show *no part* of the receiver 11 contacting the case 16 either directly or through a layer of acoustical dampening material.

FIG. 5

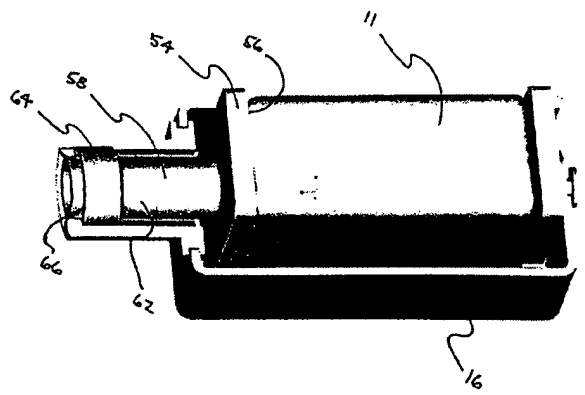
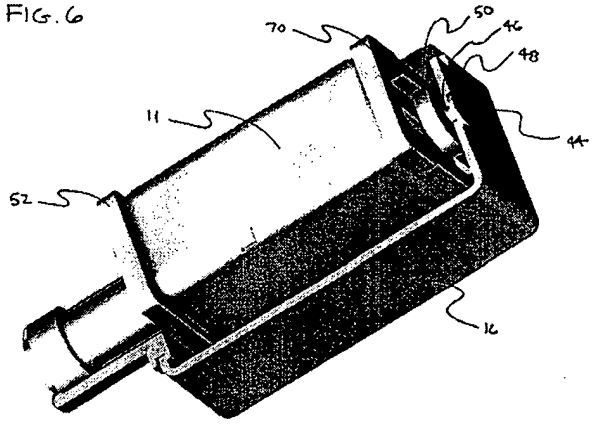
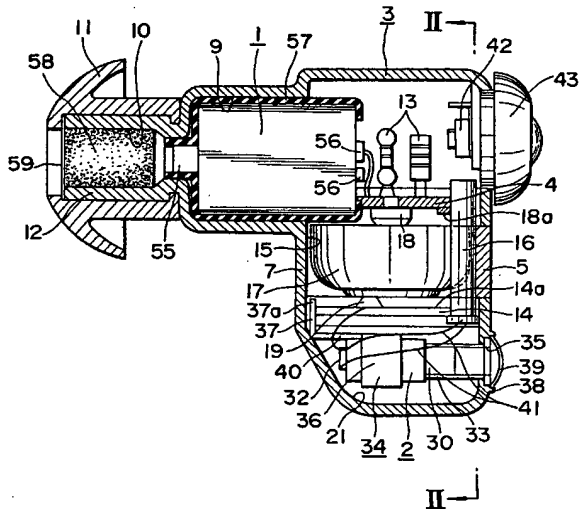


FIG. 6



As pointed out in response to the earlier Office Action, Nepomuceno repeatedly points out in the patent specification that no part of the receiver 11 directly contacts the jacket 16. For example, paragraph 23 provides that the "receiver 11 is thereby ***suspended within*** **the inner cavity 18 of the case 16**." Paragraph 8 repeats that the "receiver is **substantially** suspended within the inner cavity of the case." The receiver 11 is suspended within the inner cavity 18 of the case 16 by two mounts 52 and 70. These mounts "also ***isolate*** the receiver 11 from any vibrations occurring outside the case 16." If any part of the receiver 11 were in direct contact with the inner part of the case 16, this purpose would not be achieved. Paragraphs 5 and 6 in the Background of the Invention section provide two objects of the transducer disclosed therein as: (1) "to provide a receiver assembly that is capable of **isolating** vibration created by the receiver from other components within the electronic device, such as a hearing aid"; and (2) "to provide a receiver assembly that is capable of **isolating** the receiver from vibration created externally from the receiver." Paragraph 19 provides that the "receiver assembly 10 **isolates** a receiver 11 from vibration transmission, as shown in FIG. 3." Published claims 1, 15, 18, and 19 recite "wherein the mount supports the receiver **within** the interior cavity of the case such that the receiver **does *not* generally make contact with the interior surface of the case**." It is overwhelmingly clear from the originally filed subject matter of the Nepomuceno Publication that no part of the receiver contacts any interior surface of the case except via the mounts 52 and 70. The receiver is suspended within the inner cavity of the case in order to prevent transmission of vibrations through any structure except the vibration mounts.

The file history of Nepomuceno also clearly demonstrates that no part of the receiver 11 made contact with the case 16. In a May 2, 2003, response to an Office Action dated February 26, 2003, Application No. 09/809,130, Nepomuceno distinguished over a prior-art reference to Miyahra, U.S. Patent No. 4,447,677, on the basis that the transducer shown in Miyahra was not suspended in the case: "The transducer is not suspended in the case, as required by amended claim 1. Rather, as shown in FIG. 1, **the transducer 1 is completely enclosed by the enclosure 9**." Response to Feb. 26, 2003 Office Action, at 7 (mailed May 2, 2003) (emphasis added). FIG. 1 of Miyahra is reproduced below:



In the Remarks Section of that response, Nepomuceno stated: "The purpose of engaging the receiver at the end portion of the inner housing, thereby suspending the housing in the outer case, is to **reduce surface contact between the inner receiver housing and surrounding structures** and thus dampen vibrations caused by the outer case." Response, at 5-6 (emphasis added).

Nepomuceno submitted formal drawings in 2004, long after the filing date of Applicants' invention, which purport to show at least one side of the receiver 11 contacting an interior surface of the case 16. Applicants respectfully submit that, to the extent FIGS. 5 and 6 as issued illustrate direct contact between the receiver 11 and interior surface of the case 16, the subject matter disclosed in FIGS. 5 and 6 in the Nepomuceno Patent is not entitled to the benefit of the

filing date of the Nepomuceno Publication. As such, the Nepomuceno Patent fails to qualify as prior art under 35 U.S.C. § 102(e).

In order to carry back a Section 102(e) critical date of the Nepomuceno Patent to its original filing date of March 15, 2001, the Nepomuceno Patent as originally filed must support the subject matter relied upon to make the rejection in compliance with 35 U.S.C. § 112, ¶ 1. *See* MPEP § 2136.03. "For if a patent could not theoretically have issued the day the application was filed, it is not entitled to be used against another as 'secret prior art'" under 35 U.S.C. § 102(e). *In re Wertheim*, 646 F.2d 527, 537, 209 U.S.P.Q. 554, 564 (C.C.P.A. 1981). The Nepomuceno patent could not have issued the day the Nepomuceno application was filed on March 15, 2001, because the formal drawings do not support the issued claims calling for "suspending the inner receiver housing within the interior cavity of the outer receiver case" (issued claim 1), or "substantially prevent[ing] contact between the receiver housing and the interior surface of the outer receiver case" (issued claim 2).

Drawing corrections cannot involve new matter, and a comparison of the figures from the Nepomuceno Publication and the Nepomuceno Patent clearly show that new matter was introduced when the formal drawings were submitted in 2004:

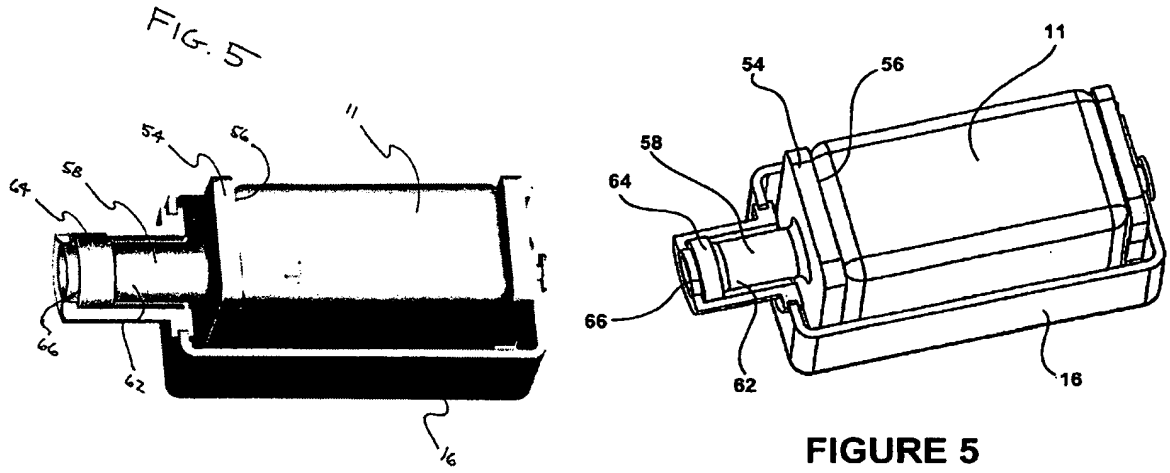


FIGURE 5

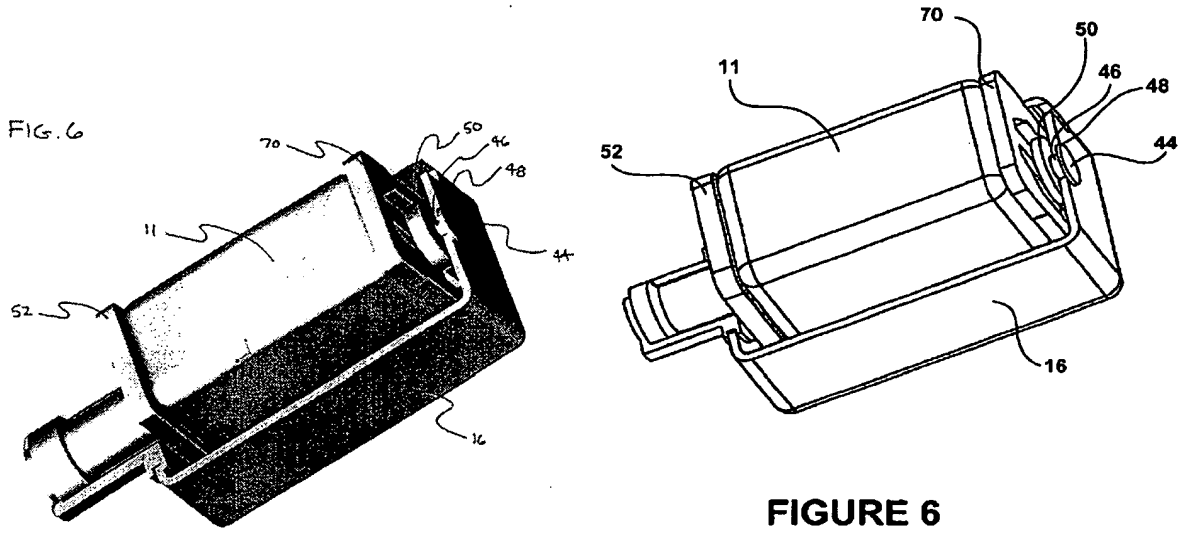
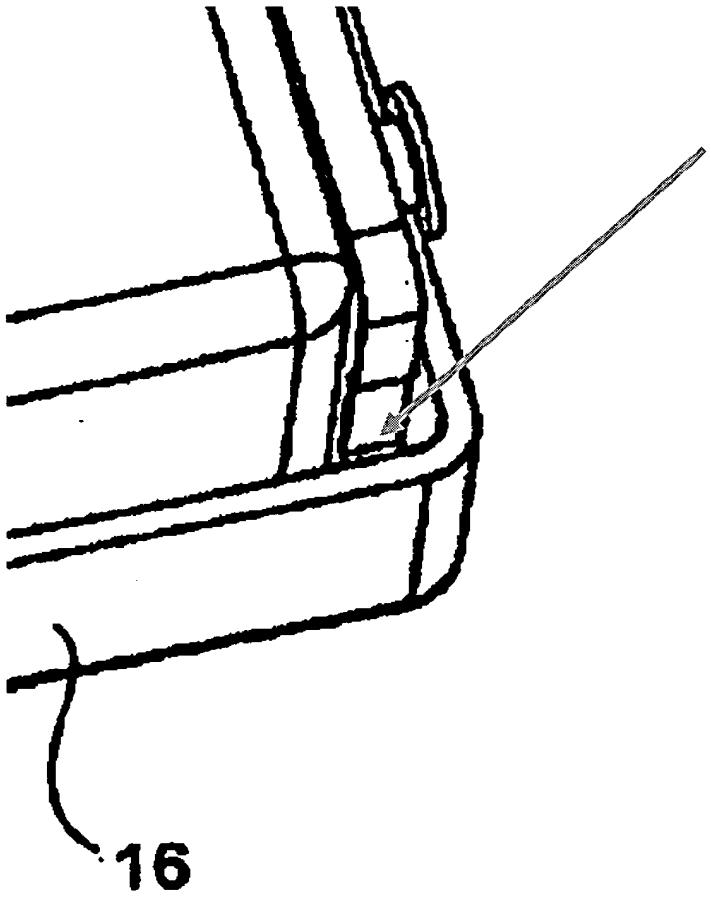


FIGURE 6

In the Nepomuceno Publication drawings, shown on the left, the receiver 11 is clearly shown to have a cross-section smaller than the mounts 52, 70, and therefore it would be impossible for any part of the receiver 11 to be contacting the case 16. Indeed, it appears that not even the mounts 52, 70 are in contact with the visible sections of the case 16. In addition, gaps between the receiver 11 and the case 16 are shown in the Publication drawings. By contrast, in the Nepomuceno Patent drawings, shown on the right, the receiver 11 appears to have an identical cross-section to the mounts 52, 70. If so, these drawings wholly fail to support the numerous statements in the Nepomuceno specification and the file history that the receiver 11 is *suspended* within the inner cavity of the case 16 in order to *prevent* contact therewith. Because the Patent drawings are not supported by the original disclosure, they are not entitled to the

effective filing date of March 15, 2001. Applicants believe that the Publishing Division erred in accepting the submission of the formal drawings. *See* MPEP §§ 608.02x & 608.02z(II).

Nevertheless, FIG. 5 of the Nepomuceno Patent does show a gap between the mount 70 and the case 16. The relevant part of FIG. 5 has been enlarged below to show this gap (an arrow has been added to show the gap area):



Because this gap identifies a distance between the mount 70 and the case 16, it is clear that the receiver 11 cannot be in contact with the case 16, even assuming for the sake of argument that the receiver 11 has a cross-section identical to the mounts 52, 70.

The enlarged drawing above also shows a gap between the mount 70 and the case 16. Therefore, there is no direct contact between the mount 70 and the case 16 or contact therebetweeen via a layer of acoustical dampening material.

Regarding claim 2 as amended, the Nepomuceno Patent does not disclose, *inter alia*, at least two mutually adjacent ones of the three jacket sections contacting corresponding ones of the housing sides.

Regarding claim 20 as amended, the Nepomuceno Patent does not disclose, *inter alia*, at least part of said jacket contacting said housing directly or via a layer of acoustical dampening material sandwiched directly between said at least part of said jacket and said housing.

Regarding claim 25, the Nepomuceno Patent does not disclose, *inter alia*, said three sections being generally flat and lying on and contacting, either directly or via a layer of acoustical dampening material, respective ones of said sides.

Regarding claim 26, the Nepomuceno Patent does not disclose, *inter alia*, a jacket having sections for at least partially enfolding said sides, one of said sections and a corresponding side forming a gap therebetween.

Regarding claim 31, the Nepomuceno Patent does not disclose, *inter alia*, a jacket having a rectangular cross-section and sections for closely interfitting with four of said six sides, wherein at least one of said sections of said jacket contacts a corresponding one of said four of six sides directly or via a layer of dampening material sandwiched between said at least one of said sections and said jacket and said corresponding one of said four of said six sides.

Regarding claim 36 as amended, the Nepomuceno Patent does not disclose, *inter alia*, an epoxy jacket encapsulating said housing so as to contact said at least two mutually adjacent ones of said sides thereof.

Regarding claim 42 as amended, the Nepomuceno Patent does not disclose, *inter alia*, an acoustic dampening material directly sandwiched between at least two mutually adjacent sides of said jacket and corresponding sides of said housing.

Finally, the Nepomuceno Patent does not teach or suggest a jacket having a thickness and a mass adapted to suppress vibrational feedback or for enhancing the structural integrity of the transducer and protecting the housing from damage due to handling.

Regarding claim 42 as amended, the Nepomuceno Patent does not disclose, *inter alia*, an acoustical dampening material sandwiched directly between at least two mutually adjacent sides of said jacket and corresponding sides of said housing.

Regarding claims 18, 19, 26, 28, 29, 37, 41, 46, and 47, which were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Nepomuceno Patent in view of U.S. Patent No. RE38,351 (Iseberg et al.), these claims are also believed to be patentable for at least the reason that the combination of these references fails to teach or suggest the claimed invention.

It is believed that all pending claims are in condition for allowance, and favorable action toward that end is requested.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

No fee is believed to be due. The Commissioner is authorized to deduct any additional fees required (except for payment of the issue fee) from or to credit any overpayment to Jenkens & Gilchrist, P.C. Deposit Account No. 10-0447, Order No. 47161-00018USPT.

Respectfully submitted,

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